

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG

UNITED STATES OF AMERICA,

Plaintiff,
v.
CRIMINAL NO. 3:09-CR-46-2
CIVIL ACTION NO. 3:10-CV-56
(BAILEY)

JESSE ALLEN JARVIS,

Defendant.

ORDER ADOPTING OPINION/REPORT AND RECOMMENDATION

On this day, the above-styled matter came before this Court for consideration of the Opinion/Report and Recommendation (“R&R”) of United States Magistrate Judge John S. Kaull. On June 13, 2011, Magistrate Judge Kaull filed his Opinion/Report and Recommendation [Crim. Doc. 175 / Civ. Doc. 5] in which he recommended this Court dismiss the § 2255 petition [Crim. Doc. 149 / Civ. Doc. 1] with prejudice.

Pursuant to 28 U.S.C. § 636 (b) (1) (c), this Court is required to make a *de novo* review of those portions of the magistrate judge’s findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and the petitioner’s right to appeal this Court’s Order. 28 U.S.C. § 636(b)(1); *Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge Kaull’s R & R were

due within fourteen (14) days after being served with a copy, pursuant to 28 U.S.C. § 636(b)(1) and Fed.R.Civ.P. 72(b). Although the return receipt date is blank, this Court will give the petitioner the extra time as to the date by which the same was returned for filing; i.e., June 17, 2011 [Crim. Doc. 177 / Civ. Doc. 6]. To date, neither party has filed objections to the R & R. Accordingly, this Court will review the report and recommendation for clear error.

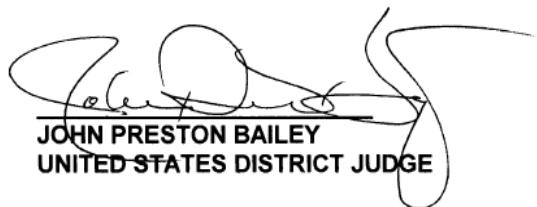
Therefore, upon careful review of the R&R for clear error, it is the opinion of this Court that the magistrate judge's **Opinion/Report and Recommendation [Crim. Doc. 175 / Civ. Doc. 5]** has thoroughly addressed the petition and correctly applied the law thereto. Accordingly, the same should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated in the magistrate judge's report. Therefore, this Court is of the opinion that the petitioner's § 2255 motion **[Crim. Doc. 149 / Civ. Doc. 1]** is hereby **DENIED** and **DISMISSED WITH PREJUDICE**. Additionally, the petitioner's request for an evidentiary hearing **[Doc. 168]** is hereby **DENIED**.

Should the petitioner desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within sixty (60) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$450.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, the petitioner may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed *in forma pauperis* from the United States Court of Appeals for the Fourth Circuit.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to all counsel of record herein and to the *pro se* petitioner.

DATED: July 11, 2011.



JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE